UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No: 8:16-bk-03043 CPM
Chapter 7

SMILANICH, ROBERT JOSEPH JR
SMILANICH, KARYN DIANNE,

Debtor(s).
_______________________________/

TRUSTEE'S MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS PURSUANT TO SECTION 363(b) & (f)(2) AND REQUEST FOR EXPEDITED HEARING

COMES NOW, Christine L. Herendeen, Chapter 7 Trustee (the "**Trustee**"), by and through her undersigned counsel, and moves the Court to permit the Trustee to sell property of the estate, free and clear of all liens, claims and interests pursuant to 11 U.S.C. §105(a), 363(b) & (f)(2) and Fed.R.Bankr.P. 6004 and 2002(a), to shorten the time for notice to all creditors, and to waive the stay period, and in support would show:

1. On December 13, 2013, the Debtor(s) filed a Chapter 7 Petition, and Christine L. Herendeen was appointed as Trustee.

2. Pursuant to 11 U.S.C. §541, the estate has a right, title and interest in that certain real property located at 3135 Allen Ave., Safety Harbor, FL 34695 and more specifically described as follows:

> THAT PART OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST ¼ OF SECTION 28, TOWNSHIP 28 SOUTH, RANGE 16 EAST, PINELLAS COUNTY FLORIDA, DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF SAID SECTION 28 AND RUN THENCE NORTH 89 DEGREES 38' 23" WEST 421.50 FEET ALONG THE CENTERLINE OF ALLEN AVENUE (CR #103), SAID LINE ALSO BEING THE EAST WEST CENTERLINE OF SAID SECTION 28; THENCE SOUTH 0 DEGREES 24' 13" WEST 40.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 24' 13" WEST 395.00 FEET ALONG A LINE PARALLEL WITH THE NORTH SOUTH CENTERLINE OF SAID SECTION 28; THENCE NORTH 89 DEGREES 38' 32" WEST 88.00 FEET PARALLEL WITH THE EAST WEST CENTERLINE OF SAID SECTION 28; THENCE NORTH 0

DEGREES 24' 13" EAST 395.00 FEET; THENCE SOUTH 89 DEGREES 38' 32" EAST 88.00 FEET ALONG THE RIGHT-OF-WAY OFALLEN AVENUE (CR #103) TO THE POINT OF BEGINNING.

Parcel ID No. 28-28-16-00000-310-0300.

3. The Trustee is relying on the Debtor(s) Schedule C claims of exemption by selling the property and incurring the administrative fees and expenses associated with the sale.

4. The Trustee has listed the property for sale with Darla Wright and Future Home Realty as the local listing agent / broker and with BK Global Real Estate Services to assist in procuring consent. Said application was approved by the court, together with the proposed realtor commissions of 6% to be paid at closing (Doc. No. 27).

5. The Trustee has received an offer to purchase the real property from John Sarmanian III and Kelly Hughes Sarmanian (the "**Buyer**"), in the amount of $461,000.00, together with a contribution of $2,390.00 toward the payoff of the second mortgage. The Buyer is a bona fide “good faith” purchaser within the meaning of 11. U.S.C. § 363(m) with no relation to the Debtor, the Trustee or the real estate agent. A copy of the contract is attached hereto as Exhibit “A” and incorporated herein by reference.

6. The Debtor(s) valued the property at $497,217.00 on Schedule A; however, the property was listed for sale for six months and the highest previous offer of $427,000.00 fell through. Additionally, the property is in need of overall general repairs due to wear and tear, including but not limited to, new paint, new flooring, new carpet, as well as more costly repairs resulting from a rotten deck and a swimming pool that has not been maintained. Based upon the foregoing and from information obtained from the listing agent, Debtor(s), and the Trustee’s own due diligence, the Trustee believes the offer is fair and reasonable and that the sale is in the best interest of creditors and the estate.

7. Said property is subject to a first mortgage payable to Seterus, Inc., as servicer for Federal National Mortgage Association ("**Seterus**"), and a second mortgage payable to C. Glen Gammon and Mariette M. Gammon, as Trustees of the C. Glen Gammon and Mariette M. Gammon Living Trust dated December 21, 2007 ("**Gammon Trust**").

8. The proposed sale contemplates sufficient funds for payment in full of the first mortgage to Seterus utilizing a payoff of approximately $421,278.53, which includes the payoff of $419,904.12, plus the per diem of $52.91 through April 28th and an April late fee of $115.13. A copy of the payoff is attached hereto as Exhibit "B" and incorporated herein by reference.

9. The proposed sale further contemplates a payment of $12,000.00 to the Gammon Trust. C. Glen Gammon and Mariette M. Gammon, as Trustees of the Gammon Trust, reviewed this motion and consented to the sale on these terms. A copy of the consent is attached hereto as Exhibit "C" and incorporated herein by reference.

10. The Trustee seeks authority from the court for Prominence Title & Escrow, LLC to handle the real estate closing and to pay from the sale proceeds the below listed distributions that are estimated in the ALTA Settlement Statement, including any and all reasonable and customary expenses necessary to consummate the sale. These amounts are estimates and are subject to change based upon the date of closing. A copy of the ALTA Settlement Statement is attached hereto as Exhibit "D" and incorporated herein by reference.

a. First, the payoff of $421,278.53 to Seterus, Inc.;
b. Second, the payment of $12,000.00 to the Gammon Trust (Listing Agent is contributing $4,610.00 in commission toward this payoff);
c. Third, the pro-rated county property taxes of $1,957.18;
d. Fourth, the realtor's commission of six percent (6%), which is $27,660.00;
e. Fifth, the settlement or closing fees in the total amount of $1,000.00 / seller;
f. Sixth, the title search of $60.00;
g. Seventh, the state tax/stamps of $3,227.00 and recording fees of $14.50;

h. Eight, the municipal lien certificate fee of $72.00; and,

i. Ninth, the past due utility bill to the City of Safety Harbor of $730.79.

11. The Estate will receive a Buyer Premium Fee in the amount of $10,000.00 that will be paid by the Buyer, which amount cannot be diminished.

12. The Trustee seeks an order from the Court allowing her to sell the Estate's interest in the real property to the Buyer pursuant to U.S.C. §363(f)(2) insofar as the sale contemplates full payment to the first mortgage holder and the second mortgage holder has consented to the terms of the sale; furthermore, the Trustee seeks an order allowing her to sell the Estate's interest with any right, title and interest of any liens to attach to the proceeds of the sale.

13. The Trustee requests that the Court expressly find that the Buyer is purchasing the property in good faith, and as such, the Buyer is a bona fide "good faith" purchaser within the meaning of 11. U.S.C. § 363(m).

14. The Trustee also requests this Court to shorten the notice to the Debtors and Creditors required by Rule 2002(a)(2), for cause, as the payoff to Seterus continues to accrue interest at a rate of $52.91 per diem and late fees at a rate of $115.13 per month. In addition, the contract for sale requires a closing prior to March 17, 2017 although the Buyers have agreed to an extension to close by April 28, 2017.

15. Finally, the Trustee requests that any Order approving the sale include a provision that shortens the fourteen day stay period required pursuant to Rule 6004(h) to allow the closing to occur on or before April 28, 2017.

WHEREFORE, the Trustee moves this Honorable Court for an expedited hearing on or before April 24, 2017, and at the conclusion of the hearing, for entry of an order, as follows:

A. Authorizing the Trustee to sell and convey the real property described herein on the terms set forth in this Motion with any right, title and interest of any and all liens to attach to the proceeds of the sale;

B. Authorizing Prominence Title & Escrow, LLC to handle the real estate closing and to disburse funds pursuant to this Court's order;

C. Approving payment of all disbursements related to such sale, including payment to Seterus, Inc, its successors and assigns, as servicer for Federal National Mortgage Association, for the first mortgage; payment of $12,000.00 to the Gammon Trust; payment of pro-rated real estate taxes; past due utility bill to the City of Safety Harbor; realtor's six (6%) percent commission; reasonable and customary closing costs, including but not limited to, settlement or closing fees, title search, municipal lien certificate fee, state tax/stamps and recording fees; and the Buyer Premium Fee to the Bankruptcy Estate of $10,000.00 that will be paid by the Buyer and which amount cannot be diminished;

D. Finding that the purchaser is a good faith purchaser pursuant to 11 U.S.C. §363(m);

E. Finding cause exists to shorten the notice to the Debtor(s) and Creditors required by Rule 2002(a)(2) and to waive the Rule 6004(h) stay period; and

F. Granting any further relief that the Court deems appropriate.

Dated: April 13, 2017

Respectfully submitted,

/s/ Christine L Herendeen

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